

SEP 24 1993

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RALPH F. COLIN (1900-1985)

September 24, 1993

SPECIAL COUNSEL
JEROLD L. JACOBS**BY HAND***William F. Caton, Acting Secretary*
Federal Communications Commission
Washington, D.C. 20554Re: Roger D. Bouldin and Raymond Deakins
(New) FM, Tusculum TN
BPH-920123ME**REQUEST FOR EXPEDITED ACTION ON
PENDING PETITION FOR RECONSIDERATION
WHICH INTEGRALLY RELATES TO FM COMPARATIVE HEARING
RECENTLY DESIGNATED IN MM DOCKET NO. 93-241**

Dear Mr. Caton:

On May 18, 1992, our client, Roger D. Bouldin and Raymond Deakins ("Bouldin"), applicant for a new FM station at Tusculum, Tennessee, filed a Petition for Reconsideration concerning the April 17, 1992 return of their above-referenced application as unacceptable for tender. Two other mutually exclusive applications were filed for Channel 276A at Tusculum, and those applications were recently designated for comparative hearing by Hearing Designation Order in MM Docket No. 93-241 ("HDO"), DA 93-874, released August 31, 1993, a copy of which is enclosed.

Note 1 of the HDO indicates that the Mass Media Bureau has referred Bouldin's Petition to the full Commission, pursuant to §1.104(b) of the Commission's Rules, "as part of an effort to expedite the final resolution...." (emphasis added). In the meantime, the two current applicants in MM Docket No. 93-241 have filed notices of appearance, the date of November 2, 1993 has been set for a Prehearing Conference, and the comparative hearing is scheduled to begin on January 13, 1994.

Bouldin's Petition for Reconsideration vigorously maintains that its application was erroneously returned. However, unless action on its Petition is specially "expedited," the matter may not be decided by the full Commission until months hence. Meanwhile, as indicated above, the hearing proceeding is not being stayed. Under these circumstances, Bouldin respectfully urges that special expedited consideration by the full Commission is warranted in the public interest. Otherwise, if Bouldin's application is reinstated (but belatedly) and consolidated for hearing with the other appli-

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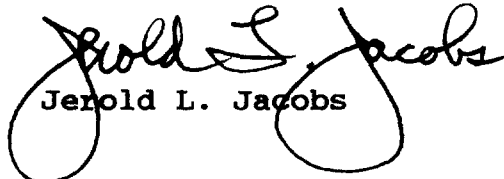
William F. Caton, Acting Secretary
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cations in MM Docket No. 93-241, the reinstatement may disrupt the ongoing hearing proceeding unnecessarily.

Of course, the Presiding Administrative Law Judge may choose to suspend procedural dates in MM Docket No. 93-241, in light of the above situation, but Bouldin does not have standing to request such suspension. Nevertheless, Bouldin is serving the Judge and all parties to the hearing with copies of this letter for whatever action they may deem appropriate. See Meridian Communications, 2 FCC Rcd 5904 (Rev. Bd. 1987) (pending petition challenging dismissal "puts a legal cloud on...[any] grant which will not dissipate until reconsideration is granted or denied").

Please direct any communications concerning this matter to the undersigned.

Very truly yours,


Jerold L. Jacobs

Enc.

cc: As on Certificate of Service (all w/enc.)

Federal Communications Commission

DA 93-874

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-241

In re Applications of

DARRELL BRYAN File No. BPH-920109MA
(hereafter "Bryan")

SBH PROPERTIES, INC. File No. BPH-920123MD
(hereafter "SBH")

For Construction Permit
for a New FM Station on Channel 276A
in Tusculum, Tennessee

HEARING DESIGNATION ORDER

Adopted: August 3, 1993; Released: August 31, 1993

By the Chief, Audio Services Division:

1. The Commission has before it the above-captioned mutually exclusive applications for a new FM station.¹

2. *Charter Filing.* In response to Item 3, Page 2, Section II of FCC Form 301 ("Legal Qualifications"), SBH indicates that its "Charter is in process of being filed." SBH shall submit an amendment detailing the date and place of filing of its Charter with the presiding Administrative Law Judge.

3. *Address.* Section II, Item 6 (new form) of FCC Form 301 (June 1989) requires that an applicant specify its address (number, street, city, state) as well as the home address of each of its principals. SBH has not completed Item 6 correctly. SBH's application gives a post office box number as the residence address for Leonard P. Hite. Accordingly, SBH must submit an amendment which gives all the information required by Section II, Item 6 to the presiding Administrative Law Judge after this Order is released.

4. *Late-Filed Amendments.* The applicant below has petitioned for leave to amend its application on the date shown. The accompanying amendment was filed after the last date for filing amendments as of right. Under Section 1.65 of the Commission's Rules, the amendment is accepted for filing. However, an applicant may not improve

its comparative position after the time for amendments as of right has passed. Therefore, any comparative advantage resulting from the amendment will be disallowed.

APPLICANT

SBH

AMENDMENT FILED

10/22/92.

5. *Comparative Coverage.* Data submitted by the applicants indicate there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

6. *Conclusion.* Except as may be indicated by any issues specified below, the applicants Bryan and SBH are qualified to construct and operate as proposed. Since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. **ACCORDINGLY, IT IS ORDERED,** That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the Bryan and SBH applications **ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING**, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine which of the proposals would, on a comparative basis, better serve the public interest.

2. To determine, in light of the evidence adduced pursuant to the specified issues, which of the applications should be granted, if any.

8. **IT IS FURTHER ORDERED,** That SBH shall submit the information specified in Paragraph 2 above, to the presiding Administrative Law Judge within 30 days of the release of this Order.

9. **IT IS FURTHER ORDERED,** That SBH shall submit an amendment which contains the information required by Section II, Item 6 (new form) of FCC Form 301, to the presiding Administrative Law Judge within 30 days after the release of this Order.

10. **IT IS FURTHER ORDERED,** That the petition for leave to amend filed by SBH (10/22/92) **IS GRANTED**, and the corresponding amendment **IS ACCEPTED** to the extent indicated at Paragraph 4 above.

11. **IT IS FURTHER ORDERED,** That a copy of each document filed in this proceeding subsequent to the date of adoption of this Order shall be served on the counsel of record in the Hearing Branch appearing on behalf of the

¹ On January 23, 1992, Roger D. Bouldin and Raymond Deakins ("Bouldin") filed an application for the Tusculum allocation (BPH-920123ME). The application was returned on April 17, 1992 by the Chief, FM Branch as unacceptable for tender. On May 18, 1992, Bouldin filed a petition for reconsideration of that action. The Bureau has referred the Bouldin petition to the Commission, pursuant to 47 C.F.R. § 1.114(b), as part of an effort to expedite the final resolution of all cases involving applications subject to the Commission's previous "hard look" rules. See *Report and Order* in MM Docket No.

84-750, 50 Fed. Reg. 19936, published May 13, 1985, *recon. denied*, 50 Fed. Reg. 43157 (October 25, 1985), *aff'd sub nom. Hilding v. FCC*, 835 F.2d 1435 (9th Cir. 1987). The *Report and Order* was reprinted at 58 RR 2d 776 (1985). The Commission recently modified the "hard look" processing rules, and made these revised rules effective as of August 7, 1992. *Report and Order, Commercial FM Broadcast Applications*, MM Docket No. 91-347, 7 FCC Rcd 5074 (1992). The applications for the Tusculum allotment were filed before that date and therefore are subject to the processing rules then in effect.

Chief, Mass Media Bureau. Parties may inquire as to the identity of the counsel of record by calling the Hearing Branch at (202) 632-6402. Such service shall be addressed to the named counsel of record, Hearing Branch, Enforcement Division, Mass Media Bureau, Federal Communications Commission, 2025 M Street, N.W., Suite 7212, Washington, D.C. 20554. Additionally, a copy of each amendment filed in this proceeding subsequent to the date of adoption of this Order shall also be served on the Chief, Data Management Staff, Audio Services Division, Mass Media Bureau, Federal Communications Commission, Room 350, 1919 M Street, N.W., Washington, D.C. 20554.

12. IT IS FURTHER ORDERED, That, to avail themselves of the opportunity to be heard, the applicants and any party respondent herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for hearing and to present evidence on the issues specified in this Order. Pursuant to Section 1.325(c) of the Commission's Rules, within five days after the date established for filing notices of appearance, the applicants shall serve upon the other parties that have filed notices of appearance the materials listed in: (a) the Standard Document Production Order (see Section 1.325(c)(1) of the Rules); and (b) the Standardized Integration Statement (see Section 1.325(c)(2) of the Rules), which must also be filed with the presiding officer. Failure to so serve the required materials may constitute a failure to prosecute, resulting in dismissal of the application. See generally *Proposals to Reform the Commission's Comparative Hearing Process* (Report and Order in Gen. Doc. 90-264), 6 FCC Rcd 157, 160-1, 166, 168 (1990), *Erratum*, 6 FCC Rcd 3472 (1991), *recon. granted in part*, 6 FCC Rcd 3403 (1991).

13. IT IS FURTHER ORDERED, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION

Larry D. Eads, Chief
Audio Services Division
Mass Media Bureau

CERTIFICATE OF SERVICE

I, Yvonne Corbett, a secretary in the law offices of Rosenman & Colin, do hereby certify that on this 24th day of September, 1993, I have caused to be hand-delivered a copy of the foregoing "**REQUEST FOR EXPEDITED ACTION ON PENDING PETITION FOR RECONSIDERATION**" to the following:

Chairman James H. Quello*
Federal Communications Commission
1919 M Street, N.W.
Room 814
Washington, D.C. 20554

Commissioner Andrew C. Barrett*
Federal Communications Commission
1919 M Street, N.W.
Room 844
Washington, D.C. 20554

Commissioner Ervin S. Duggan*
Federal Communications Commission
1919 M Street, N.W.
Room 832
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Roy J. Stewart, Chief*
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 314
Washington, D.C. 20554

Dennis Williams, Chief*
FM Branch Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Room 332
Washington, D.C. 20554

Honorable John M. Frysiak*
Administrative Law Judge
Federal Communications Commission
2000 L Street, N.W.
Room 223
Washington, D.C. 20554

Richard J. Hayes, Jr., Esq.
13809 Black Meadow Road
Greenwood Plantation
Spotsylvania, Virginia 22553

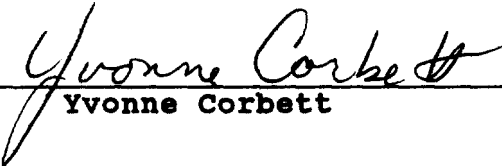
and

J. Richard Carr, Esq.
P. O. Box 70725
Chevy Chase, Maryland 20813-0725

COUNSEL FOR DARRELL BRYAN

Timothy K. Brady, Esq.
P. O. Box 986
Brentwood, Tennessee 37027-0986

COUNSEL FOR SBH PROPERTIES, INC.



Yvonne Corbett

*BY HAND